IN THE HIGH COURT OF UTTARAKHAND AT NAINITAL

Arbitration Petition No. 07 of 2004.

K.G.N. Educational and Welfare Society (A Society registered under the Societies Registration Act), having its registered office at 178 Ballupur Road, Dehradun, Uttaranchal, through its authorized representative and President Dr. Javed Anwar, S/O Mr. Noor-Ul-Hai, R/O 295 Ballupur Road, Dehradun (Uttaranchal).

… Petitioner.

Vs.

1. Sh. Anil Kumar Naswa, S/O Shri Kanhaiya Lal Naswa, R/O 83 Mannu Gunj, Dehradun.
2. Shri Chandra Mohan Naswa, S/O Shri Kanhaiya Lal Naswa, R/O 83, Mannugunj, Dehradun.
3. Shri Kanhaiya Lal Naswa alias Vivek Prakash, S/O Shri Khandaram, R/O 83 Mannugunj, Dehradun.

….Respondents.

Sri Gajendra Tripathi, learned counsel for the petitioner.
None appeared for the respondents despite service.

Date August 18, 2007

P.C.: Hon'ble B.S. Verma, J.

This application under Section 11 of the Arbitration and Conciliation act, 1996 has been moved by the petitioners to appoint an Arbitrator for settlement of disputes between the parties.

Heard Sri Gajendra Tripathi, learned counsel for the applicant.

According to the petitioner, the petitioner is a society registered under the Societies Registration Act, 1860, having its registration No. 536 of 1996-97. It has been alleged that the petitioner and the respondents entered into a contract on 5-6-1997 for tenancy and sale of property. As per clause 10 of the said contract, there is an Arbitration clause in the agreement that in case of dispute and difference between the parties, the matter shall be referred to the sole

arbitrator. A copy of the said agreement has been annexed as Annexure B to the application. It was further contended that that a notice was given by the petitioner on 26-4-2004 informing the respondents about the existence of disputes and nominated Sri S.P.Goel, S/O Sri Nathumal Goel, resident of 7 Kutchery Road, Dehradun.

I have perused the alleged agreement. It reveals from a perusal thereof that it is a rent deed and in paragraph no. 11 of this rent note, it has been mentioned that both the parties have agreed to the tenancy for a period of 11 months.

It was stated in paragraph no. 11 that a sum of Rs. One lac, which was given through cheque payable at District Cooperative Bank Dehradun by the second party-petitioner to the respondents-first party, shall remain deposited as security amount. It was further agreed between the parties that if in future, the respondents agree to sell the property in favour of the petitioner, the security amount shall be adjusted in the consideration money.

It is pertinent to mention here that the petitioner did not file any document in support of the petition that subsequent to this rent note, which was executed between the parties, the respondents ever agreed to sell the property to petitioner, which was rented out to the petitioner.

I have perused the notice given to the respondents on 26-4-2004 by the petitioner through its advocate (Annexure No. C). In paragraph no. 4, of the notice it has been mentioned that the respondents are bound to execute the sale deed for a consideration of Rs. 7,00,000/- in favour of the petitioner. The only averment made in paragraph no. 2 of this notice is that the respondents had agreed to sell the property for a consideration of Rs. 7,00,000/-.

There is no agreement for sale of the property in question. According to the petitioner also, the only basis of the present application is Annexure-B, i.e. the rend deed and as mentioned above, there is no mention for sale of property. In the last line of paragraph no. 11 there was only an averment to the effect that it is clarified that if both the parties come to terms for sale and purchase of the property in question, then in that case, the amount of security of Rs. 1,00,000/- shall be adjusted in the consideration amount. The petitioner has failed to file the allege agreement for sale between the parties.

So far as the averment made in paragraph no. 10 of the rent note is concerned, it was agreed between the parties that any dispute of tenancy between the parties shall be referred to the Arbitrator. In the application, no dispute pertaining to tenancy has been mentioned by the petitioner. In any view of the matter, on the basis of the material filed by the petitioner before this Court, it cannot be taken that there had been any agreement between the parties regarding sale of the property in question in favour of the petitioner for a consideration of Rs. 7,00,000/-. Hence this clause of arbitration cannot be invoked by the petitioner.

In view of the discussion in foregoing paragraphs, I am of the view that the matter as alleged by the petitioner is not referable to the arbitrator.

The application is devoid of merit and is liable to be dismissed outright.

The application is dismissed in limine.

(B.S. Verma, J.)

RCP